August 29, 2005

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0000100**

JON KANE
Code Enforcement Appeal

Location: 5760 South 277th Street

Appellant: **Jon Kane**
P.O. Box 292
Auburn, Washington 98071
Telephone: (253) 653-4686

King County: Department of Development and Environmental Services,
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6772
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal, extend dates of compliance
Department's Final Recommendation:	Deny appeal, extend dates of compliance
Examiner's Decision:	Grant appeal in part, deny in part and extend dates of compliance

EXAMINER PROCEEDINGS:

Hearing Opened:	July 7, 2005
Hearing Continued:	July 7, 2005
Hearing Closed:	August 4, 2005[1]

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

[1] See concurrent Order denying post-hearing motion to strike admitted evidence.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On November 17, 2004, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Jon Kane that alleges code violations at property located at 5760 South 277th Street. The Notice and Order cites the property for violations by:

    1. Clearing and/or grading within an environmentally sensitive area and in excess of 100 cubic yards without the required permits and approvals in violation of Sections 16.82.050, 16.82.060, 21A.24.020, 21A.24.190, 21A.24.290, 21A.24.320 and 21A.24.330 of the King County Code.

    2. Placement of a mobile home without permits, inspections and approvals and within an environmentally sensitive area or its buffer in violation of Sections 16.02.240, 16.04.960 (mobile home), 21A.24.200, 21A.24.290, 21A.24.320, 21A.24.330 and 21A.28.020 of the King County Code and Sections 105.1 and 113.1 of the 2003 International Building Code.

    3. Operation of an auto sales business, a vehicle storage facility, a vehicle repair business and a contractor's storage yard from an uninhabited agriculturally zoned site in violation of Sections 21A.08.050A (auto repair), 21A.08.060A (construction & trade, warehousing) and 21A.08.070A (motor vehicle dealers) of the King County Code.

    4. Accumulation of inoperable vehicles and vehicle parts throughout the premises of this residential site in violation of Sections 21A.32.230 and 23.10.040 of the King County Code.

    5. Accumulation of assorted rubbish, salvage and debris (including but not limited to household goods, appliances, scrap metal, scrap wood, glass and plastic) throughout the premises of this agriculturally zoned site in violation of Sections 16.14.010 and 21A.32.230 of the King County Code and Sections 202 (rubbish), 302.1 and 307 of the 2003 International Property Maintenance Code.

    The Notice and Order required that by January 17, 2005, a clearing and grading permit be obtained (to be based in part on a sensitive areas restoration plan conforming to certain requirements); proper permits, inspections and approvals be obtained for the mobile home or the mobile home be removed from the property; cessation of the auto sales, vehicle storage, vehicle repair and contractor's storage yard, and removal of all associated vehicles/items; removal of inoperable vehicles and vehicle parts, or storage of same within a fully-enclosed building; and removal of the rubbish, salvage and debris.

2. Appellant Kane, owner of the property, filed a timely appeal of the Notice and Order. The appeal makes the following claims:

   A. With respect to the clearing and grading violation, the appeal states that the permit would be applied for.

   B. The mobile home at issue shall be removed.

   C. The assertion of commercial activity stated in Charge 3 of the Notice and Order is "incorrect—personal property."

   D. The inoperable vehicles at issue have been removed.

   E. With respect to Charge 5 regarding the accumulation of rubbish, salvage and debris, the Notice and Order is claimed to be "incorrect."

3. The property is zoned A-10 (Agricultural-10 Acre) and is in use both as a residence and as agriculture (currently at an apparent small hobby farm scale).[2]

4. The Appellant, who stipulates to the Charge 1 clearing and grading violation, applied for the required clearing and grading permit on March 31, 2005. Additional information is necessary for review of the application and has been requested by DDES. To date, the Appellant has not submitted the additional information, citing costs and time limitations.

5. The mobile home has been removed, and DDES stipulates to the resolution of the mobile home placement issue presented by Charge 2.

6. With respect to the first part of Charge 3 that an auto sales business is being operated on the site, the evidence presented of auto sales consists of two vehicles (an automobile and a pickup truck) located on the property with apparent sale prices spray-painted onto their windshields (in the typical fashion of low-cost auto sales), and a readerboard sign stating "make offer" with a telephone number. Except for the readerboard sign, the evidence is not persuasive that vehicle sales activity on the property rises to the level of "an auto sales business." It is not unusual for private parties to occasionally engage in private sales of vehicles, on an intermittent basis which might be experienced typically as an accessory to a residential use, and under the law maintain a level of activity below that considered to be a vehicle dealer. But the use of the readerboard sign provides an advertising presence beyond that appropriate to the occasional private vehicle seller. In the final analysis, the readerboard must be removed and not utilized in any private vehicle sales onsite, so that any such sales are conducted in proper limitation and not rise to the level of "an auto sales business."

7. Charge 3 additionally alleges the operation of a vehicle storage facility onsite. The evidence presented in the record is not persuasive of such a use. There is simply no evidence presented that vehicles are being stored onsite on a commercial basis. There has been no persuasive refutation of the Appellant's assertion that the vehicles stored onsite are his personal vehicles.

[2] DDES asserts that the residential structure onsite is uninhabited, and therefore no residential accessory uses would be permitted. The evidence in the record is persuasive that the Appellant resides at the premises at least part-time, and that residential use is established.

8. A "vehicle repair business" is also alleged by Charge 3 to be conducted on the property. The sole evidence presented to support that allegation consists of photographs of a vehicle hoist and one vehicle depicted in place on the raised hoist which DDES states is not a vehicle registered in the Appellant's/property owner's name (without providing any hard evidence of the ownership). The Appellant makes a valid point that there is no bar to utilizing a hoist in maintaining and repairing personal or agricultural vehicles. Such onsite maintenance and repair are common in agricultural operations. DDES alleges repair of heavy equipment conducted onsite, but no repair of heavy equipment not associated with agricultural use of the property is proven by the evidence. In the final analysis, the evidence in the record does not support finding an operation of a "vehicle repair business" onsite.

9. Lastly with respect to Charge 3, the Notice and Order asserts the operation of a "contractor's storage yard" onsite. There is no showing by the evidence submitted in the record that any of the equipment utilized or placed onsite is related to a contracting activity. Therefore the equipment cannot be found to be a "contractor's" operation, and the property is not found to be used as a "contractor's storage yard."

10. The Appellant asserts with respect to Charge 4 that any inoperable vehicles have been removed from the site, and such assertion was left unchallenged by DDES. There is no evidence in the record that inoperable vehicles remain on the site. A bus is shown as located on the property. DDES testified that it did not know whether or not the bus is operable; DDES noted that it seems to be used for storage, but made no showing that such use constitutes a code violation, particularly any violation cited in the Notice and Order. A number of automobile tires are stored outdoors on the site, and constitute the "vehicle parts" cited as a violation of the code. They must be removed or stored in the interior of a building.

11. The Appellant asserts that significant "cleaning up" of the property's rubbish, salvage and debris has been performed, and also asserts that some of the material, such as scrap wood, is intended to be utilized in construction activity on the property and its improvement. Despite the Examiner's request, DDES has not responded to the Examiner's inquiry at the prehearing conference about the allowability of the scrap wood and any parameters of its allowed storage on the site. The Examiner finds that scrap wood can be stored temporarily on the property if it is indeed eventually utilized in construction within a reasonable period of time, which would have to be monitored by DDES in its enforcement activity. The offer of "free wood" is fairly common, but only on an incidental and sporadic basis. If it is done on a routine and continuous basis, then it would seem to be part of a wood recycling operation, or at least a culling or sorting process dealing with salvaged materials. The Appellant claims that it constitutes wood recycling, and is thus permissible on the site, but that claim, aside from not having been raised timely in the Appellant's appeal, is not supported by any persuasive citation to the code (the burden of proof is on the Appellant in proving his affirmative defense). The evidence in the record shows that fairly significant amounts of scrap metal are distributed throughout the property. The scrap metal constitutes "rubbish, salvage and debris," which must be removed or stored on an interior basis.

12. The evidence in the record supports a finding that the following charges of violation in the Notice and Order are correct:

    A. The clearing and grading charge, to which the Appellant stipulates; the Appellant is in the process of obtaining the necessary permit.

    B. The mobile home placement, but it has been removed and therefore that charge is moot.

    C. The charge of operation of "an auto sales business," but only with respect to the readerboard sign.

    D. The accumulation of vehicle parts.

    E. The accumulation of rubbish, salvage and debris.

13. The following charges of violation in the Notice and Order are not sustained:

    A. Except for the readerboard sign violation noted above, the charges of operation of "an auto sales business, a vehicle storage facility, a vehicle repair business and a contractor's storage yard" on the site have not been proven by a preponderance of the evidence.

    B. The charge of accumulation of inoperable vehicles has not been proven by a preponderance of the evidence and/or has been resolved by the removal of inoperable vehicles as asserted by the Appellant.

CONCLUSIONS:

1. Charge 2 of the Notice and Order is resolved by compliance with the code and shall accordingly be dismissed. Charges 1, 3 (only with respect to the readerboard sign), 4 (only with respect to vehicle parts) and 5 are found correct and are sustained. Except for the readerboard sign and the vehicle parts, Charges 3 and 4 have not been proven and are otherwise not sustained. Given the fact that the deadlines for compliance imposed by the Notice and Order have been obviated by the appeal process, the Examiner shall impose new deadlines for compliance.

DECISION:

With respect to Charges 1, 3, 4 and 5 regarding clearing and grading, the readerboard sign, accumulation of vehicle parts, and accumulation of rubbish, salvage and debris, the appeal is DENIED, except that the deadlines for regulatory compliance are revised and extended as stated in the following order. Charge 2 is DISMISSED as having been resolved and therefore moot. Except for the readerboard sign and the vehicle parts, the appeal with respect to Charges 3 and 4 is SUSTAINED and those charges are otherwise REVERSED.

ORDER:

1. Obtain a clearing/grading permit for the clearing and grading onsite by *no later than* **November 30, 2005**. The permit application shall include at a minimum a sensitive areas restoration plan as specified in KCC 16.82.130 and completed in accordance with DDES guidelines.

2. Remove the readerboard sign and accumulated vehicle parts from the premises or store these materials within a fully enclosed building, by *no later than* **October 31, 2005**. The Appellant and DDES shall engage in a progress discussion *on or around* **September 30, 2005**, to review progress and communicate any remaining impediments to obtaining full compliance by **October 31, 2005**.

3. Remove the rubbish, salvage and debris from the premises by *no later than* **October 31, 2005**. Any scrap wood stored for future building construction shall be stored in an orderly and safe fashion.

4. No penalties shall be assessed against the Appellant or the property if the above conditions are met. If any of the deadlines stated in the above conditions are not met, DDES may assess penalties against the Appellant and the property retroactive to the date of this order.

ORDERED this 29th day of August, 2005.

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Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 29th day of August, 2005, via certified mail to the following:

Jon Kane
PO Box 292
Auburn WA 98071

TRANSMITTED this 29th day of August, 2005, to the following parties and interested persons of record:

Jon Kane
PO Box 292
Auburn WA 98071

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE AUGUST 4, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0000100.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Holly Sawin, representing the Department and Jon Kane, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Staff Report to the Hearing Examiner for July 7, 2005
Exhibit No. 2	Copy of the Notice & Order issued on November 17, 2004
Exhibit No. 3	Copy of the Appeal received on December 13, 2004
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Photographs (9 pages of color copies plus cover sheet) of subject property
Exhibit No. 6	King County Department of Assessments records for the subject parcel
Exhibit No. 7	GIS map of the subject property, plotted July 2, 2002
Exhibit No. 8	Permits Plus notes by Greg Sutton re: application for a grading permit
Exhibit No. 9	Photographs (2 black and white copies) showing equipment on subject property

PTD:ms
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